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Re: *State of Delaware v. Stephen T. Napier, Jr.*
Case No.: 0809008148
Defendant's Motion to Suppress

Date Submitted: April 2, 2009

Date Decided: April 8, 2009

MEMORANDUM OPINION

Dear Counsel:

Pending before this Court is a Motion to Suppress (“the Motion”) filed by defendant, Stephen T. Napier, Jr., (“Napier”) seeking suppression of marijuana seized from his motor vehicle and oral statements he allegedly made during the course of a traffic stop by the Wilmington Police Department for a seatbelt violation. Napier contends that the traffic stop was unreasonable and was in violation of both his Fourth and Fourteenth Amendment Rights of the Federal Constitution and Article I, § 6 of the State of Delaware Constitution. Napier also contends the traffic stop in question was pretextual.

I. Introduction

For the reasons that follow, the Court finds that the defendant was stopped for a seatbelt violation, made certain oral statements, exhibited certain conduct which constituted probable cause and/or a reasonable articulable suspicion for the stop and that all oral statements made during the traffic stop and portions of the marijuana cigarette that were seized was in accordance with the Fourth and Fourteenth Amendments of the United States Constitution, as well as Art. I, § 6 of the Delaware Constitution. The Motion to Suppress is therefore denied.

II. Statement of Facts

Wilmington Police Department Patrolman Michael DeFilice (“Office DeFilice”), a patrolman for four (4) years, was on routine patrol on August 31, 2008 at 4:00 a.m. in the City of Wilmington. Officer DeFilice was patrolling at the 100 east block of 10th Street, westbound in the city limits in uniform patrol in a marked vehicle. Officer DeFilice observed a motor vehicle in front of him. When he pulled along side of Napier’s motor vehicle, he noticed that the defendant did not have his seatbelt fastened. *See* 21 *Del.C.* §§4801-4803 The defendant was driving a red Park Avenue motor vehicle and was stopped at a red light located on a public street next to him. At the time of the traffic stop, the defendant’s motor vehicle was then stopped at the Wilmington side of the unit block of east 10th Street in the city limits and the defendant had pulled over to a bus loading zone.

Officer DeFilice approached the window and detected a strong odor of marijuana emanating from the defendant's car. He asked the defendant for his driver's license, registration and insurance. Officer DeFilice noticed that the defendant had "bloodshot eyes", a "strong odor of marijuana" emanating from his motor vehicle and "his eyes were approximately half closed". The defendant was also "very confused." The defendant's hand to eye coordination "was very slow" in retrieving the motor vehicle documents. The defendant also appeared not to understand any of patrolman DeFilice's basic questions and also had dexterity problems while trying to retrieve and/or locate the motor vehicle documents. The defendant fumbled twice with his hands and upper body during his search for the documents. The defendant also could not produce an insurance card for his motor vehicle when requested.

The traffic stop lasted approximately five (5) minutes. Based upon the smell of marijuana and other observations of the defendant, Napier was requested to step out of his motor vehicle wherein he almost fell to the ground. Napier also appeared to be confused and stated, "It's just marijuana man, come on!"

Officer DeFilice's testified the odor of marijuana followed the defendant out of his vehicle and was "strongly emanating" from the defendant's person.

The defendant was then ordered by Officer DeFilice to place his hands on the car. When he was ordered to do so, the defendant "torqued up his upper body" and also "tensed up". The defendant pulled his hands to his upper body and disobeyed

the officer's command. According to Officer DeFilice, the defendant did not assume the normal constant position for purposes of arrest and then moved his hands and upper body. Officer DeFilice indicated he considered this conduct and/or response as "resisting behavior." Therefore the defendant was placed in handcuffs and a protective pat down was made on Napier's person for weapons or other instruments of crime.

At this time another police officer, Joseph DeLisa appeared at the scene. The defendant was later given field coordination and sobriety tests at the Wilmington Police Department station.

Officer DeFilice testified that he made a decision to arrest the defendant for marijuana possession after the protective pat down.

Officer DeFilice then searched the defendant's motor vehicle and found a partially smoked cigarette blunt which was seized and placed into an evidence locker at Wilmington Central.

The defense presented its case-in-chief.

Eric Lee Norwood ("Norwood") was sworn and testified. Norwood testified he knows the defendant. He was in the motor vehicle as his passenger on August 31, 2009 at approximately 4:00 a.m. He recalls the night in question. The defendant and Norwood were in Napier's motor vehicle when it was pulled over by a Wilmington Police officer "up the hill" on 10th street near Rodney Square. Norwood testified that both Napier and he were wearing seatbelts. Norwood testified the officer "had an

attitude” and asked both parties, the defendant and the passenger, if there were any drugs in the car. Norwood testified there were no drugs in the car and neither party was smoking marijuana. Norwood informed the officer there “were no drugs in the car.”

Next, Norwood testified that Officer DeFilice asked him “Where are you coming from?” Norwood testified he didn’t know why they were being stopped. Norwood became “extremely scared” because the officer became “real aggressive”. Norwood was then excused and he walked home.

On cross-examination Norwood testified he is defendant’s cousin. He testified he didn’t understand why the Wilmington Police asked his cousin for his driver’s license, insurance and registration.

Napier was called as a witness. He was traveling westbound on 10th street in the city of Wilmington climbing up the hill when he noticed an officer on the left side of his motor vehicle. When he was stopped, Napier was asked several questions, including where he was coming from; where he was going; and whether there were any drugs in the car. Napier believes he produced timely the insurance, driver’s license and registration card. He testified at the suppression hearing that he was, in fact, wearing his seatbelt. Napier testified he was not, in fact, smoking marijuana and first saw the Wilmington Police in the rear of his motor vehicle. Napier was searched and believes Officer DeFilice was “aggressive” and went near his genital area and that is why he, in part, resisted arrest.

Officer DeFilice was recalled in rebuttal. He testified he conducted a search of defendant's motor vehicle after the defendant was arrested. Officer DeFilice found a partially used burnt marijuana cigarette weighing approximately 1 gram. It was field tested positive for marijuana. The evidence was then tagged and placed into the evidence locker at the Wilmington Police Department with the permission of Officer DeFilice's supervisor. On a scale of zero to ten, DeFilice said the "odor of marijuana was ten" coming from defendant's motor vehicle. On a scale of zero to ten, the odor of marijuana emanating from the defendant's person was also a "ten".

III. The Party's Contentions

(i) The Defendant's Contentions

Defendant, in his Motion to Suppress ("the Motion") contends his Fourth and Fourteenth Amendments of the United State's Constitution, and Article I, § 6 of the Delaware Constitution were violated when his motor vehicle was stopped on August 31, 2008 by the Wilmington Police Department.

In support of this legal argument defendant contends that he was illegally "seized" when the circumstances surround the traffic stop suggested a reasonable person would not feel free to leave. *See Michigan v. Chesternut*, 486 U.S. 567, 573-74 (1988). Defendant further asserts that once he was "seized" Fourth Amendment scrutiny should be triggered and the level of the scrutiny should hinge upon the nature of the "seizure". *See Alabama v. White*, 496 U.S. 325 (1990); *U.S. v. Roberson*, 90 F.3d 75

(3d Cir. 1996). Napier contends the officer executed his authority and the scope of the investigation should have been limited to a mere traffic stop.

Defendant also asserts in his Motion that he was then detained illegally under the Fourth Amendment which requires that a police officer have a “reasonable articulable suspicion that criminal activity was afoot”. *See, Terry v. Ohio*, 392 U.S. at 21; *U.S. v. Sokolov*, 490 U.S. 17-8 (1989). Defendant contends that Superior Court’s decision in *State v. Church*, 2008 WL4947653 (Del. Super.) applies and provides, in relevant part, that “[...]even assuming that a person that’s lawfully detained, the scope and length of detention must be ‘carefully tailored to its underlying justification’ and ‘absent probable cause, police may not seek to validate their suspicions via investigative means that approach the conditions of arrest.’” *See United States v. Sharpe*, 470 U.S. 675, 682 (1985); *Florida v. Royer*, 460 U.S. 491, 499-500 (1983). Defendant’s argument is therefore that Officer DeFilice exceeded the bounds of “otherwise lawful detention, and the stop became an ‘arrest’” and exceeded the lawful authority to detain him after a traffic stop. *See Royer* at 500 – 07 (Defendant’s Motion at 3).

The defendant also contends in paragraph 6 of his Motion that police used a “ticky-tack traffic violation” as a pretext to stop the defendant’s motor vehicle and then conducted a *de facto* shake down. Napier contends that the Superior Court recently ruled that the State Constitution prohibits such pretextual stops. *See State v. Heath*, WL 3842144, Del. Supr. Young, J. (Nov. 28, 2006). Defendant contends that it was therefore unlawful for Officer DeFilice to use a routine traffic stop as a fishing

expedition to conduct a criminal investigation, absent reasonable suspicion to justify the “prolonged detention”. *See U.S. v. Beck*, 140 3d 1129 (8th Cir. 1998); *see also, United States v. Guzman*, 864 F.2d 1512, 1519 (10th Cir. 1988). Napier contends that the subsequent search of his motor vehicle was illegal.

Finally, citing Maryland law, defendant contends in his Motion that the police investigation of a vehicle or its occupants where the marijuana was seized is a separate seizure that must be supported by independent facts to justify this additional intrusion and was therefore illegal. *See e.g., Ferris v. State*, 735 A.2d 491 (Md. 1999); *Whitehead v. State*, 698 A.2d 115 (Md. Ct. Sp. App. 1997).

(ii) The State’s Contentions

The State contends at oral argument that the subject motor vehicle stop was a lawful stop for a violation of a seatbelt violation. *See*, 21 *Del. C.* §§4801-4803. The State argues that objective facts, when considered under totality of the circumstances justified the continued investigation of the defendant, including the marijuana odor on defendant’s person; in his motor vehicle; the defendant’s eyes were blood shot; his eyes were squinty and half-closed; and the defendant had significant dexterity problems, as well as the fact Napier almost fell on the ground after exiting his motor vehicle all warrant the limited intrusion and subsequent investigation by the officer. Therefore, the State contends that Officer DeFilice was well within his rights to continue the investigation of a traffic stop for a possible DUI/drug related violation of 21 *Del. C.* §4177(a) and/or marijuana possession, 16 *Del.C.* §4714(d)(19).

The State also contends that the traffic stop was not a pretextual stop because of the instant Title 21 motor vehicle violation and no Federal or Delaware Constitution provisions were violated. The State also contends that Officer DeFilice had probable cause to search the defendant's motor vehicle as a lawful inventory search after the defendant was arrested. The State contends oral statements by the defendant and the marijuana later subsequently found during the search of defendant's motor vehicle should not be suppressed.

IV. Standard of Review

"A defendant moving to suppress evidence bears the burden of establishing that a search or seizure violated his rights under the U.S. Constitution, the Delaware Constitution, or the Delaware Code." See *Rakas v. Illinois*, 439 U.S. 128, 130 N.199 S.Ct. 421, 58 L.Ed.2d 387 (1978); *State v. Dollard*, 788 A.2d 1283, 1286 (Del. Supr. 2001); *State v. Bien-Aime*, 1993 WL 138719 at *3 (Del. Supr. March 17, 1993).

V. Opinion and Order

The State cited no case law and defendant was candid with the Court that there is no requirement, statute, or case law that requires this Court to dismiss the charges because the underlying traffic charge, a violation of 21 *Del. C.* §§4801-4803 was not part of the original charging documents in this Court.

(i) Validity of the Initial Traffic Stop

The first issue this Court must decide is whether there was a reasonable articulable suspicion for the traffic stop in question and/or whether it was pretextual in nature and therefore the Motion to Suppress should be granted. As set forth in *State of Delaware v. John C. Dinan*, 1998 Del. C.P. LEXIS 31, Welch, J. (October 15, 1998) “reasonable articulable suspicion” is defined as follows:

The Fourth Amendment in Article 1, Sec. 6 of the Delaware Constitution protecting individual's right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Del. Const. Art. I § 6. Accordingly, a police officer must justify any "seizure" of a citizen. The level of justification required varies with the magnitude of the intrusion to the citizen. See, *U.S. v. Hernandez*, 854 F.2d 295, 297 (8th Cir. 1988). Not every contact between a citizen and a police officer, however, involves a "seizure" of a personal under the Fourth Amendment. See, *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868, n16 (1968); see also, *Thompson v. State*, Ark. Supr., 303 Ark. 407, 797 S.W.2d 450, 451 (1990). . . .

Of the three (3) categories of police encounters as stated in *State v. Arterbridge*, 1995 Del. Super. LEXIS 587, 1995 W.L. 790965 (December 7, 1995) “stopping an automobile falls under the second category and therefore requires that the officer have a reasonable articulable suspicion to do so.” *Delaware v. Prouse*, 440 U.S. 648, 59 L. Ed. 2d 660, 99 S. Ct. 1391 (1979).

For the traffic stop to be legal “...the quantum of evidence required for reasonable articulable suspicion is less than that of probable cause.” *Downs v. State*, Del. Supr., 570 A.2d 1142, 1145 (1990). As provided in *Jones v. State*, Del. Supr. 744 A.2d 856 (1999), the “determination of reasonable suspicion must be evaluated in the context of the totality of circumstances as viewed from the eyes of a reasonable,

trained police officer in the same or similar circumstances, combining objective facts with an officer's subjective interpretation of those facts." *Id.* Case law has indicated that changing lanes without a signal is a violation of 21 *Del. C.* §4155 which creates probable cause for an officer to stop the vehicle. *See e.g. State v. Walker*, 1991 Del. Super., LEXIS 104, Del. Supr., Cr. A. No.: IK90-08-001, Steel, J. (March 18, 1991).

A violation of 21 *Del. C.* §4114(a) may also be a statutory violation constituting probable cause. *See e.g., State v. Harmon*, 2001 Del. Super., LEXIS 338 Del. Super. (August 22, 2001). "If probable cause to arrest exists, this provides more than reasonable suspicion necessary to stop the vehicle." *Eskridge v. Vosshell*, Del. Supr., No. 307, 1990, Horsey, J. (Apr. 17, 1991) (ORDER); *Austin v. Division of Motor Vehicles*, Del. Super., C.A. No. 91A-08-2, Goldstein, J. (Jan. 9, 1992) (Op. and Order); *State v. Lahman*, Del. Super., Cr. I.D. No. 9410011118, Cooch, J. (Jan. 31, 1995) (Mem. Op.); *State v. Brickfield*, Del. CCP, Case No. 9609017975, Stokes, J. (May 8, 1997); *Webb v. State*, Del. Supr., No. 332, 1997, Berger, J. (Mar. 26, 1998) (ORDER).

In the instant case, this Court finds that under a review of the totality of circumstances that a seatbelt violation in plain view of a police officer, while on uniform patrol, in a marked vehicle allegedly violating 21 *Del. C.* §4108 is, in fact, probable cause and/or reasonable articulable suspicion for a traffic stop. The general rule is that "[t]he stop of an automobile is reasonable where the police have probable cause that a traffic violation occurred." *State v. Banther*, Del. Super., Cr.A. No.: IK97-05-0094, (Ridgely, J.)(September 24, 1998).

Hence, this Court shall not address defendant's legal argument that the instant stop was pretextual because the Court finds the defendant committed this motor vehicle violation in plain view. *See also, Simmons v. Michael D. Shaban*, 2008 WL 5208573, Del. Com. Pl. (Dec. 11, 2008) (defining the requirements of whether a seizure was pretextual as alleged and whether a stop, violated defendants Art. I, § 6 rights of the Delaware Constitution.)

(ii) Did the Frisk and Subsequent Arrest Violate Defendant's Rights?

The next issue to be reviewed by this Court is whether the subsequent arrest of the defendant was pretextual and/or the frisk of defendant's person violated the defendant's rights under Art. I, § 6 of the Delaware Constitution and Fourth and Fourteenth Amendments of the U.S. Constitution. This Court finds that once Officer DeFilice was placed on notice of defendant's physical appearance, namely his bloodshot eyes; partially closed eyes; his dexterity problems; his slowness in answering and responding to simple basic investigate questions; the strong odor of marijuana emanating from his person and his motor vehicle that there was clear probable cause for the subsequent investigation and to have the defendant exit his motor vehicle. For further inquiry, the Court notes that the defendant also almost fell to the ground when he exited the motor vehicle.

Based upon these facts, the Court finds that the duration of the stop past the original traffic stop was, in fact, clearly justified and reasonably related to the traffic stop. The continued investigation clearly was supported by new independent facts

justifying the officer's conduct. *See, Caldwell*, 780 A.2d at 1049. Simply put, the defendant's physical appearance and odor of marijuana were uncovered facts after the initial traffic stop that independently warrant additional investigation by Officer DeFilice after the initial traffic stop.

The Court also finds that the record supports the conclusions that Officer DeFilice performed a protective pat down for weapons and other instrumentalities (marijuana) of the defendant's person and had sufficient probable cause. The Court finds no violation of the defendant's constitutional rights. The later taking of the defendant into custody so that he may forthcoming answer for the commission of a crime under 11 *Del. C.* §1901(1) was clearly with justified probable cause existed for the arrest based upon the strong marijuana odor on defendant's person and the defendant's physical condition.

Officer DeFilice was authorized to conduct activities "reasonably related" to the purpose of the stop when he was placed on notice of the strong marijuana odor emanating from the defendant's motor vehicle and/or his person. An objective view of the officer's actions indicate this encounter and conduct by the defendant clearly a warranted follow up investigation by the police officer. Under *Terry; Caldwell*, 780 A.2d at 1047, the Court finds "the stop and inquiry was reasonably related in scope to the justification" for the initial stop. *Id.*

Finally, this Court finds there was probable cause to search the defendant's motor vehicle due to the strong odor of marijuana on defendant's person and

emanating from his motor vehicle. The seizure of the marijuana was not a second or independent investigation beyond the scope of the initial stop because of uncovered new facts justify further investigation. The defendant's rights under the Fourth and Fourteenth Amendment of the U.S. Constitution and Art. I, § 6 of the Delaware Constitution requirement to be free from unreasonable search and seizure were not violated. *See e.g. Caldwell v. State*, 780 A.2d (Del. Supr.).

The officer had probable cause both to believe that Mr. Napier could be under the influence in violation of 21 *Del. C.* §4177(a) as well as currently smoking and/or possessing marijuana due to defendant's physical state. *See*, 16 *Del.C.* §4714(d)(19). No bootstrap investigation for probable cause for other offenses was conducted by Officer DeFilice once the defendant's conduct placed Officer DeFilice of the potential violation of possessing or using marijuana or driving under the influence. 21 *Del.C.* §4177(a). In short, no separate seizure occurred and defendant was properly arrested under 11 *Del C.* §1901(1) for the instant charges by the Wilmington Police Department.

The Court therefore Denies defendant's Motion to Suppress.

The matter shall be scheduled for trial at the convenience of the parties and with notice to counsel of record.

IT IS SO ORDERED this 8th day of April, 2009.

John K. Welch
Judge

/jb

cc: Ms. Juanette West, Scheduling Case Manager
CCP, Criminal Division